

**DRAFT**

**Prepared by: Mark F. Hyson**

TAX MAP NO. OR PIN: 6042-87-4396-000

Exempted from recordation tax  
under the Code of Virginia (1950), as amended,  
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803  
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (the "Easement"), made this \_\_\_\_ day of \_\_\_\_\_, 2008, between HILL CREST ASSOCIATES, L.C. (herein called "Grantor"); and the BOARD OF SUPERVISORS OF FAUQUIER COUNTY, of the Commonwealth of Virginia ("Grantee"), whose address is 10 Hotel Street, Warrenton, Virginia 20186; and PNC BANK, N.A., successor in interest to Marshall Bank and Trust Company (the "Bank"); and GULICK, CARSON & THORPE, P.C., TRUSTEE, (the "Trustee"); and de VINK VINEYARDS, LLC, for the sole purpose of consenting to this grant of easement; the designations Grantor and Grantee including their successors and assigns;

#### **RECITALS**

**Whereas**, Grantor is the owner in fee simple of real property situated on Delaplane Grade Road (Virginia State Route 712), in the Marshall Magisterial District of Fauquier County, Virginia, containing 255.7256 acres, more thoroughly described herein, and hereinafter referred to as "the Property," and desires to convey to Grantee, for the public purpose identified herein, an open-space easement over the Property as herein set forth; and

**Whereas**, Grantee is the governing body of a political subdivision of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code and Treasury Regulation §1.170A-14(c)(1), is a public body under Section 10.1-700, of the Code of Virginia, 1950, as amended, and is willing to accept an open-space easement over the Property as herein set forth; and

**Whereas**, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, of the Code of Virginia, as amended (the "Open-Space Land Act"), declares that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration and encouraging more economic and desirable urban development, helping provide or preserve necessary park, recreational, historic and scenic areas, and conserving land and other natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land;

**Whereas**, the Open-Space Land Act declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Grantee to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space and recreational lands of the Commonwealth; and

**Whereas**, the Property is located within an area of Fauquier County which is designated as a Rural Agricultural (RA) and Rural Conservation (RC) District for zoning purposes;

**Whereas**, the Property lies adjacent to or near other lands protected under perpetual open-space easements;

**Whereas**, the Property contains frontage on portions of Crooked Creek, the "Protected Stream," a tributary of Goose Creek.

**Whereas**, the Property is located within the Goose Creek Watershed, an area designated as worthy of special environmental protection in the Comprehensive Plan as a scenic and environmentally sensitive area, the portion of which located in Fauquier County has been designated a State Scenic River by Act of the General Assembly of the Commonwealth of

Virginia. This Easement establishes riparian buffers and restricts forestal activities and thereby furthers the public purposes of Grantee's Comprehensive Plan and will yield a significant public benefit.

**Whereas**, the Comprehensive Plan of Fauquier County, Virginia (1992-2010), as adopted by its Board of Supervisors, includes the following goals: "To recognize the county's traditionally agricultural and rural character and the need for preservation of its open-spaces and scenic beauty"; "To protect critical environmental resources and to maintain renewable natural resources so that they are not degraded but remain viable for future generations"; and "To protect and promote the agricultural industry;" and

**Whereas**, preservation of the Property will promote the public policies of Fauquier County and further a public purpose of the Grantee by protecting open-space, productive agricultural lands, scenic views, and natural resources; and

**Whereas**, the Grantor and the Grantee desire to protect in perpetuity the open-space values identified in the previous paragraphs, including, but not limited to, conserving and protecting agricultural and forestal lands as natural resources, protecting rural agricultural lands by prohibiting further subdivisions, protecting water quality, protecting scenic views and protecting open-space lands currently in open-space easements, the "Open-Space Values," and intend to accomplish such protection by restricting the use of the Property as hereinafter set forth; and

**Whereas**, the conservation purpose of this Easement is to preserve and protect in perpetuity the Open-Space Values of the Property; and

**Whereas**, the Grantee has determined that the restrictions hereinafter set forth in this Easement (the "Restrictions") will preserve and protect in perpetuity the Open-Space Values of

the Property, which advance the public purposes established in its Comprehensive Plan, which values are reflected in the preceding paragraphs, the Grantee's evaluation of the Property, and the documentation of the condition of the Property as contained in the Grantee's files and records; and

**Whereas**, the Grantee has determined that the Restrictions will limit the uses of the Property to those uses consistent with, and not adversely affecting the Open-Space Values of the Property, the scenic values enjoyed by the general public, or the governmental conservation policies furthered by this Easement; and

**Whereas**, the Grantee, by acceptance of this Easement by its Board of Supervisors at its meeting of \_\_\_\_\_, designates the Property to be retained and used for the preservation and provision of the Open-Space Values and of Open-Space land pursuant to the Open-Space Land Act; and

**Whereas**, the Grantor intends to convey to the Grantee by this Easement the right to preserve and protect the Open-Space Values of the Property in perpetuity and to further the public purposes established in the Fauquier County Comprehensive Plan, and to qualify the grant of such restrictions and associated rights as a qualified conservation contribution under Section 170(h)(2)(c) of the Internal Revenue Code of 1986.

**Whereas**, by Right of First Refusal dated June 17, 2004, and recorded August 26, 2004, in Deed Book 1116, at page 425, in the Fauquier County Circuit Court Clerk's Office, the Grantor granted de Vink Vineyards, LLC, a right of first refusal to purchase the Property in accordance with the terms contained therein.

**Whereas**, de Vink Vineyards, LLC, joins in the execution of this Easement to evidence its consent to the grant of easement contained herein.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by Grantee, Grantor does hereby give, grant and convey to Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the Property, which is described in EXHIBIT "A" attached hereto and made a part hereof, and consists of 255.73 acres located about 1 mile north of Delaplane, Marshall Magisterial District, Fauquier County, Virginia, to-wit:

ALL THAT certain tract or parcel of land, lying and being situate in Marshall Magisterial District, Fauquier County, Virginia, collectively described as Residue, containing 255.73 acres, more or less, as shown on plat of survey prepared by Eric K. Niskanen, L.S. of Carson Harris, dated March 4, 2004, entitled "Plat Showing Large Lot Division on the Property of Crest Hill Associates, L.C.," recorded in Deed Book 1116, page 401, in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

AND BEING a portion of the same property conveyed to Grantor by John W. Rucker and Marjorie T. Rucker, husband and wife, by deed dated December 29, 1993 and recorded January 7, 1994 in Deed Book 712, at page 0001, and re-recorded on March 10, 2004, in Deed Book 1086, pat page 2078 (to add the marital status). Hereinafter referred to as the "Property."

The above-described tract is identified as 6042-87-4396-000 among the tax records of Fauquier County, Virginia. Even if the Property should consist of more than one subdivided or tax parcel, it shall be considered one parcel for the purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole rather than to such individual parcels.

#### **ARTICLE I – EASEMENT**

1. **PURPOSE.** The purpose of this Easement is to preserve and protect the conservation value of the Property in perpetuity by enforcing the restrictions imposed on the use of the Property by Article II, while allowing the Property to be used for all other uses by the owner as long as such uses do not interfere with the conservation value of the Property. The

conservation value of the Property is its value as open-space land as more specifically identified as the Open-Space Values described in the Recitals to this Easement which are hereby incorporated.

2. **DURATION.** This Easement shall be perpetual. It is an easement in gross which runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the Grantor and the Grantee, and their respective successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

3. **NO PUBLIC ACCESS.** Although this Easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof.

## **ARTICLE II – RESTRICTIONS**

Restrictions are hereby imposed on the use of the Property to protect the Open-Space Values of the Property pursuant to the public policies set forth above. The acts that the Grantor covenants to do and not to do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

1. **DIVISION.** The Property shall not be divided into, or separately conveyed as, more than three (3) parcels, each separately transferrable. Any such subdivision shall comply with the provisions of Grantee's zoning and subdivision ordinances in effect at such time. Except as provided in this paragraph, no further divisions of the Property shall be allowed.

Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered a prohibited division of the Property, provided that the Grantee is made a party to

the deed creating the boundary line adjustment and at least one of the following conditions is met:

(i) The entire adjacent parcel is subject to a recorded open-space easement conveyed to Grantee, or other public body as defined in Section 10.1-1700 of the Code of Virginia; and

(ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of Grantee or the governing body of any successor in interest to the Grantee.

**2. BUILDINGS AND STRUCTURES.** Grantor shall give Grantee at least thirty (30) days written notice before beginning construction or enlargement of any dwelling on the Property.

No permanent or temporary buildings or structures may be built, maintained or replaced on the Property other than:

(i) **Primary Residences:** Three (3) primary residential dwellings, one for each division permitted under this Easement, not to exceed 6,000 square feet of above-ground enclosed living area, and non-residential outbuildings or structures commonly and appropriately incidental thereto and sized appropriately for single family use;

(ii) **Secondary Residences:** Three (3) secondary dwellings not to exceed 2,000 square feet of above-ground enclosed living area and non-residential outbuildings or structures commonly and appropriately incidental thereto and sized appropriately for single family use;

(iii) **Tenant House:** One tenant house, which currently exists upon to the Property, as approved by Grantee with Special Exception Permit \_\_\_\_\_; and

(iv) Farm buildings or structures, except that a farm building or farm structure exceeding two thousand five hundred (2,500) square feet in ground area or a cumulative total of seven thousand five hundred (7,500) square feet in ground area of additional new buildings may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation value of the Property. The total footprint of all farm structures combined shall not exceed 7,500 square feet on any subdivided parcel being less than 100 acres, nor exceed 10,000 square feet on any parcel or subdivided parcel being 100 acres or larger. For the purposes of this subparagraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in paragraph 3(i).

(v) Private roads and utilities that serve permitted buildings or structures in this Paragraph 2, unpaved farm or forest roads may be constructed and maintained.

(vi) No permitted dwelling, farm building or structure shall be located on the Property above the \_\_\_\_\_ foot elevation contour line of \_\_\_\_\_ Mountain as shown on the topographical map prepared by the U. S. Geological Survey for the Marshall quadrangle of Fauquier County, Virginia dated 1970 and photorevised 1983. .

No permitted dwelling, farm building or structure may be constructed within 250 feet of the centerline of State Route 712 (Delaplane Grade Road). This prohibition shall not apply to the construction or maintenance of fencing, livestock feeding or watering troughs, mailboxes, gate posts, or permitted signs.

The above-described single-family dwellings and associated structures shall be built within the two designated buildings areas shown on the sketch attached hereto as Exhibit A.



**3. INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited:

(i) Agriculture including animal husbandry, viniculture, aquaculture, silviculture and equine activities, as well as related small scale incidental or commercial or industrial operations that Grantee shall approve in writing as being consistent with the conservation values of this Easement; provided, however, that large-scale industrial or commercial operations such as wineries, race tracks or livestock feedlots are permitted only with the prior written approval of Grantee;

(ii) Temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation value herein protected;

(iii) Processing and sale of agricultural products produced on the Property as long as no additional buildings are required to conduct such activities; and

(iv) Activities that can be, and in fact are, conducted within permitted buildings without material alteration to the external appearance. Temporary outdoor activities related to agricultural uses permitted under this paragraph 3 which involve fifty (50) or more people at any one event, provided that any such activity shall not exceed three (3) consecutive days and provided that the total of such outdoor events shall not exceed seven (7) events in any twelve (12) month period, unless approved by Grantee in advance in writing. Notwithstanding any other provision of this easement, no commercial recreational use, except for de minimis commercial recreational uses, shall be allowed on the Property.

**4. MANAGEMENT OF FOREST.** A forest stewardship plan, pre-harvest plan or other documentation of the intended harvest shall be prepared by a professional forester and provided

to Grantee for approval, which shall not be unreasonably denied, at least thirty (30) days prior to any commercial timber harvesting. The primary purposes of the forest management plan shall be to maintain a working forest, preserve old hardwoods, prevent clear cutting, improve wildlife habitat, maintain the health of the forest and conserve soil and water. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any commercial forestry or land clearing activity is undertaken. Notwithstanding the foregoing, the following shall be permissible on the Property and shall not constitute commercial timber harvesting:

- (i) The cutting and removal of trees for Grantor's domestic consumption;
- (ii) The cutting and removal of trees or brush in connection with the construction of permitted structures, roads, trails and fences and to accommodate other permitted activities hereunder;
- (iii) The cutting and removal of diseased or dead trees or trees, which, were they not removed, would present a hazard to health or safety; and
- (iv) The cutting and removal of trees to maintain and enhance hardwood timber growth.

**5. GRADING, BLASTING, MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds, stream bank restoration and erosion control pursuant to a government permit, or as required in the construction of permitted buildings, structures, private roads, and utilities as permitted in Paragraph 2. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining or drilling for oil or gas on the Property is

prohibited. Notwithstanding the foregoing, the removal of surface rocks or boulders for agricultural purposes is permitted.

**6. ACCUMULATION OF TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property.

**7. SIGNS.** Display of billboards, signs, or other advertisements that are visible from outside the Property is not permitted on or over the Property except to:

- (i) State the name and/or address of the owners of the Property;
- (ii) Advertise the sale or lease of the Property;
- (iii) Advertise the sale of goods or services produced incidentally to a permitted use of the Property;
- (iv) Provide notice necessary for the protection of the Property;
- (v) Give directions to visitors; or
- (vi) Recognize historic status or participation in a conservation program.

No such sign shall exceed nine square feet in size.

**8. RIPARIAN BUFFER.** To protect water quality of the Protected Stream, Grantee covenants and agrees there shall be no plowing, pasturing of cattle, cultivation or other earth disturbing activity in a thirty-five (35) foot buffer strip along each edge of the Protected Stream, the "buffer area," as measured from the top of the stream bank. Within this buffer area there shall be no buildings or other structures constructed, no storage of compost, manure, fertilizers, chemicals, machinery or equipment, and no cultivation or other earth disturbing activity conducted, except as may be reasonably necessary for:

- (i) Stream bank restoration and erosion control pursuant to a government permit;
- (ii) Fencing along or within the buffer area;
- (iii) Provided the water-quality protection function of the buffer area is not impaired, removal of trees presenting a danger to persons or property and removal of diseased, dead or non-native invasive trees, shrubs or plants;
- (iv) Construction and maintenance of stream crossings which allow for unobstructed water flow and wildlife movement;
- (v) Creation and maintenance of foot or horse trails with unimproved surfaces;
- (vi) Improvement of the viewshed from the dwelling by the minimal harvesting of trees or limbing of the tree canopy; and
- (vii) Limited mowing to control non-native invasive species or protect trees and other plants planted in the buffer area.

### **ARTICLE III – ENFORCEMENT**

**1. RIGHT OF INSPECTION.** Grantor covenants and agrees that representatives or agents of Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this Easement after permission from, or reasonable notice to, the Grantor or the Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to the Grantor or Grantor's representative being given at the earliest practicable time.

2.     **ENFORCEMENT.** The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained. Grantor hereby grants and conveys to Grantee the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of the gift of the Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from non-compliance, and to enjoin non-compliance by ex parte temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by the court.

3.     **NATURAL CAUSES.** Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control or any prudent action taken by Grantor to avoid, abate, prevent or mitigate damage or changes to the Property from such causes.

4.     **NO PUBLIC RIGHTS.** The parties agree that the Easement does not create, and shall not be construed to create, any rights of the general public to maintain any action for enforcement against Grantor, or their successors or assigns, for any violation of the terms of this Deed.

5.     **FAILURE TO ENFORCE.** The failure of Grantee to enforce any term of this Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.

#### ARTICLE IV – AMENDMENT

1. **GRANTEE'S PROPERTY RIGHT.** Grantor covenants and agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time.
2. **EXTINGUISHMENT, CONVERSION, DIVERSION.** Grantor and Grantee covenant and agree that this Easement is perpetual and shall not be extinguished, and acknowledge that extinguishment of the Easement is not permitted by the Open-Space Land Act. Nevertheless, should any attempt be made to extinguish the Easement, any such extinguishment can be made only by judicial proceedings and only if such extinguishment also complies with Virginia Code Section 10.1-1704. In addition, no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 and the provisions of Section 170 of the Internal Revenue Code and the applicable Treasury Regulations. In any sale or exchange of the Property subsequent to an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set forth in Section 1 above, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. Grantee covenants and agrees to use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this easement and the Open-Space Land Act.
3. **AMENDMENT.** Grantor and Grantee, or Grantee and the then owner of the Property, may amend or modify the Easement to strengthen its terms, increase protection of the Property's conservation value and natural resources, add to the restricted property, provided that no amendment shall be allowed which affects the Easement's perpetual duration or results

in any financial benefit to the Grantor or the then property owner. No amendment or modification shall be effective unless documented in a notarized writing executed by Grantee and the then owner of the Property and recorded among the land records of the Fauquier County, Virginia.

#### **ARTICLE V – DOCUMENTATION**

**DOCUMENTATION.** Documentation retained in the office of Grantee including, but not limited to the baseline documentation report, describes the condition and character of the Property at the time of the gift. The Documentation may be used to determine compliance with and enforcement of the terms of the Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantee, prior to the donation, documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby acknowledge that the documentation supplied and contained in the files of Grantee is an accurate representation of the Property.

#### **ARTICLE VI – GENERAL PROVISIONS**

1. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances, including but not limited to, any mortgages not subordinated to this Easement.
2. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1701 and is evidenced by the signature of Paul McCulla, County Administrator, by authority granted by Grantee's Board, November 9, 2006.
3. **ASSIGNMENT BY GRANTEE.** Grantee may transfer or convey this Easement to a public body, as the same is defined by the Open-Space Land Act, but only if Grantee conditions such transfer or conveyance on the requirements that;

(i) All restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity; and

(ii) The transferee agrees not to convert or divert the Property from open-space land uses except as permissible under Section 170 of the Internal Revenue Code, as amended, and under Section 10.1-1704 of the Open-Space Land Act; and

(iii) The transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the Internal Revenue Code, as amended, and the applicable Treasury Regulations; and

(iv) The transferee records among the land records where the Easement is recorded an assignment of the Easement and provides written notice of such assignment to the Grantor or the then current owner of the Property.

**4. NOTICES TO GRANTEE.** Grantor shall notify Grantee in writing at, or prior to, closing on any inter vivos transfer or sale of the Property. Any notices, requests for approval or other communications to Grantee or any notices, responses to requests for approval or other communications to Grantor under any section of this Easement shall be in writing and sent to the following addresses or to such addresses as may hereafter be specified in writing:

Grantee:

Fauquier County Administrator  
10 Hotel Street/ Suite 204  
Warrenton, Virginia 20186

Grantor:

Hill Crest Associates, L.C.  
2394 Delaplane Grade Road  
Delaplane, Virginia 20144

With a copy to:

Fauquier County Attorney  
10 Hotel Street/Suite 204  
Warrenton, Virginia 20186

**5. INCLUSION OF TERMS IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property.



6. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the forgoing, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

7. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage or open-space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

8. **ZONING ORDINANCE.** Notwithstanding any other provision of this Easement, Grantee's Zoning Ordinance shall apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement.

9. **MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

10. **TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see Section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

11. **WARRANTIES.** THE COUNTY OF FAUQUIER AND ANY CO-HOLDER MAKE NO EXPRESS OR IMPLIED WARRANTIES REGARDING WHETHER ANY TAX BENEFITS WILL BE AVAILABLE TO GRANTOR FROM THE DONATION OR ANY PARTIAL DONATION OF THIS EASEMENT, NOR WHETHER ANY SUCH TAX BENEFITS MIGHT BE TRANSFERABLE, NOR WHETHER THERE WILL BE ANY MARKET FOR ANY TAX BENEFITS WHICH MIGHT BE TRANSFERABLE, NOR WHETHER THIS DEED OR ANY OTHER FORM OR DOCUMENTATION PREPARED BY THE COUNTY WILL SATISFY ANY STATE OR FEDERAL REQUIREMENT, LAW OR REGULATION RELATED TO TAX CREDITS OR DEDUCTIONS FOR THE DONATION OR PARTIAL DONATION OF THIS EASEMENT.

**12. RIGHT TO DESIGNATE EASEMENT CO-HOLDER.** Grantee shall have the right, in its sole discretion, now and at any time in the future, to transfer part or all interest it has under this Easement to a public body as the same is defined in Section 10.1-1700 of the Open-Space Land Act. Such transfer shall not require the consent of the Grantor or any trustee under a deed of trust which has been subordinated to this Easement, but shall be subject to the conditions and requirements of subsection 3 of this section (Assignment by Grantee).

**13. SEVERABILITY.** If any provision of this deed or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

**14. ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.

**15. CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.

**16. RECORDING.** This Easement shall be recorded in the land records office of the Circuit Court of Fauquier County, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

**(SEE NEXT PAGE FOR SIGNATURES)**

WITNESS the following signatures and seals:

Hill Crest Associates, L.C.,

\_\_\_\_\_(SEAL)  
By: \_\_\_\_\_, Manager, Grantor

COMMONWEALTH OF VIRGINIA,  
COUNTY OF FAUQUIER, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth aforesaid,  
hereby certify that \_\_\_\_\_, Manager of Hill Crest Associates, L.C., Grantor, personally  
appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public  
Notary ID# \_\_\_\_\_

My commission expires: \_\_\_\_\_ (SEAL)

Accepted:  
BOARD OF SUPERVISORS OF FAUQUIER COUNTY, VIRGINIA  
A body corporate and politic

By: \_\_\_\_\_  
Paul McCulla  
Its County Administrator

COMMONWEALTH OF VIRGINIA,  
COUNTY OF FAUQUIER, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth  
aforesaid, hereby certify that Paul McCulla, Fauquier County Administrator, personally appeared  
before me this day and acknowledged the foregoing instrument on behalf of the Board of  
Supervisors of Fauquier County, Virginia.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public  
Notary ID# \_\_\_\_\_

My commission expires: \_\_\_\_\_ (SEAL)

PNC Bank, N.A.:

By: \_\_\_\_\_  
Its

COMMONWEALTH OF VIRGINIA,  
COUNTY OF FAUQUIER, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth aforesaid,  
hereby certify that \_\_\_\_\_, as \_\_\_\_\_ of PNC  
Bank, N.A., personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public  
Notary ID# \_\_\_\_\_

My commission expires: \_\_\_\_\_ (SEAL)

Gulick, Carson & Thorpe, P.C., Trustee

By: \_\_\_\_\_

Its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA,  
COUNTY OF FAUQUIER, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth aforesaid,  
hereby certify that \_\_\_\_\_, as Trustee, personally appeared before me this day  
and acknowledged the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

Notary ID# \_\_\_\_\_

My commission expires: \_\_\_\_\_ (SEAL)

de Vink Vineyards, LLC

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

COMMONWEALTH OF VIRGINIA,  
COUNTY OF FAUQUIER, TO WIT:

I, \_\_\_\_\_, a Notary Public for the Commonwealth aforesaid,  
hereby certify that \_\_\_\_\_, Manager of de Vink Vineyards, LLC, personally appeared  
before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public  
Notary ID# \_\_\_\_\_

My commission expires: \_\_\_\_\_ (SEAL)

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